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12     DOLORES A. ARREGUIN, for  
12     herself and other members  
13     of the general public similarly situated

14  
15                   **UNITED STATES DISTRICT COURT**  
16                   **NORTHERN DISTRICT OF CALIFORNIA**

17     DOLORES A. ARREGUIN, for herself  
18     and other members of the general public  
19     similarly situated,

CASE NO. C 07-06026 MHP  
[Filed: November 29, 2007]

[Assigned for all Purposes to:  
Honorable Judge Marilyn H. Patel]

20                   Plaintiffs,

**SUPPLEMENTAL BRIEF IN  
OPPOSITION TO MOTION TO  
COMPEL ARBITRATION AND  
MOTION TO DISMISS**

21                   v.

Date : June 23, 2008  
Time : 2:00 p.m.  
Place : Courtroom 15

22     GLOBAL EQUITY LENDING, INC., a  
23     Georgia Corporation; and DOES 1  
24     through 10, Inclusive,

25                   Defendants.

1 Plaintiff, Dolores A. Arreguin, on behalf of herself and all others similarly  
 2 situated, hereby files her Supplemental Brief In Opposition to Defendant, Global  
 3 Equity Lending, Inc.'s, Motion to Compel Arbitration and Motion to Dismiss.  
 4 Considering that the Court requested the entire deposition transcripts to be attached  
 5 with the intent of reading the entire testimony of the witnesses, and the Court's  
 6 limiting of this supplemental brief to five (5) pages, Plaintiff will provide limited  
 7 citation to said transcripts as deemed appropriate and relevant to the issue presented.

8 Further, Plaintiff provides the Court with the new ruling in *Samuel Metters v.*  
 9 *Ralphs Grocery Company*, Case No. 06CC10397 (April 1, 2008 Cal. Fourth  
 10 Appellate Dist.), which is on point although non-binding on this Court.

11 **I.**

12 **RELEVANT DEPOSITION TESTIMONY**

13 As Plaintiff's testimony reveals, the circumstances surrounding the signing of  
 14 "World Lending Group, Inc. Mortgage Loan Originator Employment Agreement,"  
 15 ("Subject Contract"), which has now surfaced for the first time in this litigation, still  
 16 renders it unconscionable. See Declaration of Farris E. Ain, Exh. "4," Supplemental  
 17 Disclosures of Defendant Global Equity Lending, Inc. (hereinafter "Ain Decl., Exh.  
 18 '4,'") Bate Stamp GEL 021-025. It also raises doubts regarding the credibility of  
 19 Defendant's prior allegations and the new evasive testimony from Defendant's  
 20 witnesses regarding Plaintiff's job application process, or the application process as a  
 21 whole. Thus, the Court should look closely at whatever new arguments Defendant  
 22 may now submit. Assuming Plaintiff did sign the Subject Contract, she lacked a  
 23 meaningful choice in entering into the contract or negotiating its terms, and the terms  
 24 are unreasonably favorable to the other party.

25 On July 19, 2002, Plaintiff completed a job application and was hired July 29,  
 26 2002. Ain Decl., Exh. "4," Bate Stamp GEL 001-034. Plaintiff could not have  
 27 entered into any employment contract with Defendant, Gobal Equity Lending, Inc.  
 28 ("GEL"), as alleged in Sandra Croteau's first Declaration submitted in Support of

1 Defendant, GEL's, Motions to Dismiss and Compel Arbitration. GEL's name  
 2 surfaced on or about November 2003. At the time of hiring, Plaintiff was applying  
 3 for a job with World Lending Group ("WLG").

4       Defendant has now produced documents evidencing Plaintiff's "wet signature"  
 5 on several documents signed on July 19, 2002, including a Mortgage Loan Originator  
 6 Employment Agreement between Plaintiff and WLG. Ain Decl., Exh. "4," Bate  
 7 Stamp GEL 021-025. The relationship of these two companies, GEL and WLG, is  
 8 unclear as testimony was not permitted on the subject. Thus, Plaintiff does not know  
 9 if the transaction was a simple name change or otherwise. The same is true as to  
 10 whether an agreement with WLG necessarily means that GEL can assert the  
 11 arbitration and venue provisions of the same to GEL's relationship with Plaintiff.

12 **A. Defendant's Witnesses:**

13       Eliminating the testimony of Sandra Croteau as irrelevant,<sup>1</sup> we are left with the  
 14 testimony of Eric Pennington, who hardly was a Person Most Knowledgeable. He  
 15 did, however, provide some general information regarding the application process of  
 16 Defendant, GEL, and its predecessor, WLG. Yet, like Croteau, Pennington had no  
 17 specific knowledge regarding Plaintiff's application process or the facts and  
 18 circumstances surrounding her hiring and her actual signing of any documents and  
 19 contracts between Plaintiff and GEL or WLG. Ain Dec., Exh. "3," Deposition of  
 20 Pennington (hereinafter "Pennington Depo") 9:23-24:19; 49:23-50:20; 51:1-14.

21       Pennington worked for Defendant from February to July 2002. He was a loan  
 22 originator for Defendant's predecessor (WLG) and worked for the software company  
 23 that set-up Defendant's internet application process. As for the internet application  
 24 job process, Pennington confirmed that the employment contracts, and other  
 25 documents, were provided via the web site on a "take-it or leave-it" basis.

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26       <sup>1</sup> Sandra Croteau testified that her employment for Defendant and its predecessor began  
 27 January 2003, after Plaintiff was hired. Croteau testified that she had no personal knowledge  
 28 regarding the circumstances surrounding the application process and hiring of Plaintiff other than it  
 must have been the same as when she began her employment. See Ain Declaration Exh. "2"  
 Deposition of Croteau, 36:20-23; 40:15-41:8; 42:9-21; 53:16-58:5, and 45:1-16.

1 Pennington Depo, 34:1-36:4; 49:23-50:20, 51:1-14. (“Q. Okay. And if they choose  
 2 not to agree to the agreement or any of its terms, what happens? A. The process  
 3 terminates. They cannot continue.”).

4 Although Plaintiff was not permitted to request documents in conjunction with  
 5 the Court-ordered depositions, Defendant did produce some documents as part of its  
 6 initial disclosure. A in Decl., Exh. “4,” Bate Stamp GEL 001-034. It now appears  
 7 that, in addition to the internet application process described in Pennington’s  
 8 deposition, the process through which Defendant cannot confirm that Plaintiff did  
 9 ever review and sign any employment agreement, Plaintiff did *physically* sign a  
 10 different employment agreement on July 19, 2002. While Defendant cannot confirm  
 11 how Plaintiff received the July 19, 2002, documents, Plaintiff believes that they were  
 12 physically given to her. Pennington also testified that initially there may have been a  
 13 manual application process in addition to the web site process. Pennington Depo,  
 14 27:9-28:2. As such, the only relevant testimony regarding whether Plaintiff received,  
 15 signed, and understood the Subject Contract is that of Plaintiff.

16 **B. Plaintiff’s Testimony:**

17 First, Plaintiff could not have signed any employment contract in July 2002  
 18 with Defendant, Global Equity Lending, because the company did not exist at that  
 19 time. A in Decl., Exh. “1,” Deposition of Dolores Arreguin (hereinafter “Arreguin  
 20 Depo”) 29:21-23. This much is uncontested by Defendant’s witnesses. Nor could  
 21 she have checked any boxes (representing “I Agree”) for that same reason. Arreguin  
 22 Depo, 30:17-20; 31:4-7. One thing is clear, Plaintiff describes a very confusing  
 23 company start-up and application process. Arreguin Depo 31:8-32:1.

24 Second, Plaintiff confirms that throughout her employment, documents called  
 25 agreements or terms and conditions, would pop-up on the web site and “you couldn’t  
 26 get in your web site unless you accepted or said ‘yes,’ or typed your name in. They  
 27 would block you from that.” Arreguin Depo, 32:2-8. See also, Arreguin Depo,  
 28 36:14-17. Plaintiff testified that the signature on the Subject Contract is hers, but she

1 did not understand the Subject Contract. Arreguin Depo, 37:24-38:1. While she does  
 2 not remember exactly how she got it, she believes it was given to her by a recruiter,  
 3 Carl Enloe. Arreguin Depo, 46:23-47:1; 52:22-53:20.

4       Third, the Subject Contract was signed by Plaintiff, along with the other  
 5 documents presented to her during the application process. See Exh. "4," Bate Stamp  
 6 GEL 026-34. Further evidencing that Plaintiff did not know what she was signing is  
 7 the document titled "Employee Acknowledgment Regarding World Lending Group  
 8 Employee Policy Manual." Bate Stamped GEL 027. There was no such manual in  
 9 July 2002. Arreguin Depo, 83:22-25. Nor, was Plaintiff given an option to sign the  
 10 Subject Contract or any other documents presented to her throughout her  
 11 employment. Arreguin Depo, 53:25-54:13. Plaintiff signed many documents through  
 12 her employment on a take-it or leave-it basis, or she could not work for the company  
 13 or log into the computer. Arreguin Depo 59:3-15; 64:1-17; 66:10-18; 67:3-6.

14       Finally, as to the specific arbitration and venue provisions, Plaintiff never saw  
 15 these provisions at all, yet alone, had an opportunity to negotiate their terms.  
 16 Arreguin Depo, 71:14-16. In fact, whether applying for a job via the web site or  
 17 manually, as it is possible that Plaintiff might have received documents through either  
 18 method, the process was confusing and there was no system in place that would allow  
 19 Plaintiff, or the proposed class, to discuss or have explained to them what rights they  
 20 have waived by signing certain documents. Arreguin Depo, 82:10-21. Thus, the  
 21 Subject Contract is procedurally and substantively unconscionable.

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III.

## CONCLUSION

For all of the reasons stated herein, the Court should deny Global's Motion to Compel Arbitration and Motion to Dismiss because the Subject Contract clauses are unconscionable as argued in Plaintiff's Opposition and this Supplemental Brief.

DATED: June 9, 2008

## LAW OFFICES OF HERBERT HAFIF, APC

By:

Farris E. Ain  
Attorneys for Plaintiff, DOLORES A.  
ARREGUIN, for herself and other  
members of the general public similarly  
situated

## **PROOF OF SERVICE**

STATE OF CALIFORNIA }  
COUNTY OF LOS ANGELES } ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 269 West Bonita Avenue, Claremont, CA 91711.

On June 9, 2008, I served the foregoing document described as:  
**SUPPLEMENTAL BRIEF IN OPPOSITION TO MOTION TO COMPEL  
ARBITRATION AND MOTION TO DISMISS**

- [ ] by placing the true copies thereof enclosed in sealed envelopes addressed as follows:

[X] by placing [ ] the original [X] a true copy thereof enclosed in sealed envelopes addressed as follows:

[SEE ATTACHED MAILING LIST]

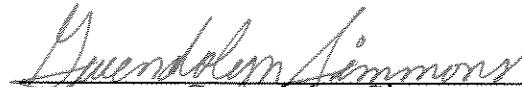
- [X] I deposited each envelope in the mail at Claremont, California.<sup>2</sup> The envelope was mailed with postage thereon fully prepaid.
  - [X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the United States Post Office on that same day with postage thereon fully prepaid at Claremont, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
  - [ ] As follows: I am "readily familiar" with the firm's practice for delivering overnight envelopes or packages to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served, at the address as last given by that person on any document filed in the cause and served on the party making service.
  - [X] By filing with the U.S. District Court's CM/ECF filing system.

<sup>2</sup> By mail signature must be of person depositing envelope in mail slot, box or bag.

1 [ ] (State or Federal) I declare under penalty of perjury under the laws of  
2 the State of California that the above is true and correct.

3 [X] (Federal) I declare that I am employed in the office of a member of the  
bar of this court at whose direction the service was made.

4 Executed on June 9, 2008, at Claremont, California.

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7 Gwendolyn Simmons

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## SERVICE LIST

*Dolores A. Arreguin v. Global Equity Lending, Inc.*  
U.S.D.C. Case No. C 07 6027 MHP

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